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Docket No. 13282-1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Clarke

Group Art Unit 1761

Serial No.: 09/858,190

Examiner: Weinstein, Stephen L.

Filing Date: May 15, 2001

Title: Packaging of Bananas

Office of Petitions
Assistant Commissioner for Patents
Washington, DC 20231

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PETITION TO (1) ISSUE CORRECT FILING RECEIPT and
(2) CORRECT THE FRONT PAGE OF PUBLICATION NO. U.S. 2002/0090425 A1

Sir,

This is a petition

- (1) to issue a correct Filing Receipt for this application, Serial 09/858,190, and
- (2) to correct the front page of the corresponding Publication No. US 2002/0090425 A1.

Applicants are also filing, contemporaneously with this petition,

- (1) a petition to issue a correct filing receipt for provisional application Serial No. 60/325,762, from which this application claims priority, and
- (2) a petition to issue a correct filing receipt for Serial 09/989,682, which is a continuation-in-part of this application and which also claims priority from Serial No. 60/325,762, and to correct the front page of the corresponding Publication No. US 2002/0127305A1.

It is suggested that the Office should consider the three petitions together.

CERTIFICATE OF MAILING UNDER 37 CFR 1.8

I hereby certify that this correspondence is being deposited with United States Postal Service with sufficient postage as first-class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231

On May 12, 2003

Print d name of person signing this certificat : T.H.P.Richardson
Signature

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Attached are copies of

- (A) the Filing Receipt mailed 03/07/2003, on this application, showing in manuscript the corrections needed (Document 1 attached), and
- (B) the front page of Publication No. US 2002/0090425 A1, showing in manuscript the corrections needed (Document 2 attached).

This application claims priority from provisional application Serial No. 60/325,762, which resulted from the conversion of non-provisional application Serial No. 09/580,379 into a provisional application. The need for this petition results from the following facts.

- (1) The Office first incorrectly assigned to Serial No. 60/325,762 a filing date of 09/26/2000, i.e. Sept. 26, 2000 instead of May 26, 2000.
- (2) In a Corrected Filing Receipt mailed 05/03/2002, the Office did change the incorrect filing date of 09/26/2000, but incorrectly changed it to 05/26/2002, i.e. May 26, 2002, instead of May 26, 2000.
- (3) A further request to correct the filing receipt for Serial No. 60/325,762 was mailed May 20, 2002, and, following a telephone conversation between the undersigned and the Office of Initial Patent Examination (OIPE), resubmitted by fax on Nov. 25, 2002. However, no response to that request has been received.
- (4) Repeated requests to correct the filing receipts for Serial No. 09/858,190 (this application) and Serial No. 09/989,762 (the CIP application) have resulted in responses stating that correction of the filing date of the priority application could not be made because the correction was inconsistent with the PTO records.

As will be seen from the attached Documents 1 and 2, both the Filing Receipt and the front page of the Publication need to be corrected by entering the correct filing date of the provisional application No. 60/325,762, which was filed May 26, 2000, and from which priority is claimed. The Filing Receipt also requires entry of the Small Entity status of the applicant. The Publication also requires correction of the phrase "Non-provisional of provisional" to "Provisional".

In support of the need for the requested corrections, attached are copies of the following documents:

Document 3. Filing Receipt for Serial No. 09/580,379, mailed 10/27/2000, giving a correct filing date of 05/26/2000 and noting the Small Entity status of the applicant.

Document 4. Decision mailed 08/01/2001 granting the petition to convert Serial No. 09/580,379 into a provisional application having the filing date of 05/26/2000.

Document 5. Decision mailed 08/29/2001, again granting the petition to convert Serial No. 09/580,379 into a provisional application, and in addition assigning the Provisional application Serial No. 60/325,762.

In order that the record should show that the need for this petition, and the delays incurred in the prosecution of this application are the fault of the Office, not of the Applicants, the following facts are noted. This list of facts is the same as the list of facts in the accompanying petition on the CIP application Serial No. 09/989,682, and, therefore, includes some facts relating to Serial No. 09/989,682 not strictly relevant to the present petition.

1. On 10/09/2001, following the decisions in Documents 4 and 5, the Office mailed a filing receipt for Serial No. 60/325,76; the filing receipt incorrectly gives the filing date as 09/26/2000.
2. On 10/11/2001, the Office mailed a filing receipt for Serial No. 09/858,190; the filing receipt does not give any data for the Domestic Priority claimed by Applicants
3. On 10/29/2001, Applicants mailed a request for a correct filing receipt for Serial No. 60/325,762, attaching copies of Documents 4 and 5.
4. On 10/29/2001, Applicants mailed a request for a correct filing receipt for Serial No. 09/858,190, noting that the application claimed domestic priority from provisional application No. 60/325,762, filed May 26, 2000 (converted from Application Serial No. 09/580,379).

5. On 11/30/2001, the Office issued a filing receipt for Serial No. 09/989,682 (the CIP application); the filing receipt incorrectly gives the filing date of Serial No. 60/325,762 as 09/26/2000.
6. On 01/23/2002, the Office mailed a Corrected Filing Receipt for Serial 09/858,190; the Corrected Filing Receipt correctly states that the application claims benefit of 60/325,762, but incorrectly states that Serial No. 60/325,762 was filed 09/26/2000.
7. On 02/12/2002, Applicants mailed a request to correct the filing receipt mailed 01/23/2002 on Serial No. 09/858,190, noting that the correct filing date of provisional application Serial No. 60/325,762 was May (not September) 26, 2000.
8. On 03/04/2002, Applicants mailed (together with a reply to a Notice to File Missing Parts) a request to correct the filing receipt issued on Serial No. 09/989,682 (the CIP application).
9. On 03/13/2002, the Office mailed a response to the Applicants' Request mailed 02/12/2002, on Serial No. 09/858,190, stating that the filing date of a parent application "cannot be changed by this request" and noting that a petition was needed if the filing date of the parent application was to be corrected.
10. On 03/25/2002, Applicants mailed a Renewed Request to Correct Filing Receipt on Serial No. 09/858,190, setting out the relevant facts in full and attaching copies of the relevant documents, including the attached Documents 4 and 5 (i.e. the Decisions setting out the correct filing date for provisional application Serial No. 60/325,782).
11. On 03/27/2002, the Office mailed an Updated Filing Receipt on Serial No. 09/989,682 (the CIP application); this Filing Receipt again incorrectly gave the date of filing of Serial No. 60/325,762 as 09/26/2000.
12. On 04/09/2002, Applicants mailed a request for a corrected filing receipt on Serial No. 09/989,682 (the CIP application), attaching copies of the attached Documents 4 and 5 (i.e. the Decisions setting out the correct filing date of 05/26/2000 for Serial No. 60/325,782).
13. On 04/12/2002, the Office mailed a response to the request filed in 04/09/2002 on Serial No. 09/989,682 (the CIP application), stating that the filing date of the priority

application could not be changed by the request, and that a request for a corrected filing receipt should be directed to the priority application.

14. On 05/03/2002, the Office mailed a Corrected Filing Receipt for provisional application Serial No. 60/325,762; the Corrected Filing Receipt incorrectly gives the filing date as 05/26/2002, instead of 05/26/2000.

15. On 05/20/2002, Applicants mailed a request to correct the filing receipt mailed 05/03/2002 on provisional application Serial No. 60/325,762, attaching copies of the attached Documents 4 and 5 (i.e. the Decisions setting out the correct filing date of 05/26/2000 for provisional application Serial No. 60/325, 782). Receipt of these papers was acknowledged by a postcard received 06/05/2002.

16. On 11/21/2002, the undersigned, having had no reply to the request mailed 05/20/2002 to correct the filing receipt on Serial No. 60/325,762, called the Office of Initial Patent Examination (OIPE) to inquire as to the position, and was told that the files were with Examiner Stephen Weinstein. In a subsequent telephone call, Examiner Weinstein confirmed that he had the files, but stated that the OIPE would need to deal with Filing Receipt issues. In a subsequent telephone discussion on or about 10/22/2002, the OIPE advised the undersigned to send duplicate copies of the papers mailed 05/20/2002, together with an appropriate cover paper, by fax to 703-746-9195 for the attention of JCWS.

17. The undersigned attempted to follow the advice from the OIPE, but found that 703-746-9195 would not receive the fax message.

18. On 11/25/02, the undersigned called the OIPE and said that it had not been possible to fax the papers to 703-746-9195, and was then advised to send the papers instead to 703-308-7751.

19. On 11/25/2002, the undersigned sent by fax to 703-308-7751 duplicate copies of the papers mailed 05/20/2002 on Serial No. 60/325,762, noting that the failure to correct the filing receipt for Serial No. 60/325,762 had resulted in the failure of the Office to issue correct Filing Receipts on Serial numbers 09/858,190 and 09/989,682.

20. On 01/15/2003, Examiner Weinstein issued a restriction requirement on Serial 09/858,190.

21. On 01/31/2003, the undersigned called Examiner Weinstein to see whether he could provide any information about the filing receipt issues, but Examiner Weinstein was unable to clarify the situation.
22. On 02/10/2003, Applicants mailed a response to the restriction requirement, and in that response repeated the request for a corrected filing receipt.
23. On 03/07/2003, the Office mailed a Corrected Filing Receipt for Serial No. 09/858,190; the Corrected Filing Receipt incorrectly gives the filing date of Serial No. 60/325,762 as 05/26/2002 and does not note the Small Entity status of the applicant.
24. On 04/02/2003, Applicants mailed a further request to correct the filing receipt mailed 03/07/2003 on Serial No. 09/858,190.
25. On 04/14/2003, the Office mailed a response to the request mailed 04/02/2003 on Serial No. 09/858,190. The response stated that the filing receipt could not be corrected because the filing date of a parent application could not be changed by the request, and that a petition to correct the filing date in the parent application was required.

Respectfully submitted,


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